SUPREME COURT, U. S.

FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 787

BERNARD J. AND MARY D. OHLENDORF,

Appellants,

v.

GARNETT AND MARTHA GAYLES,
PYRAMID BLDG. & LOAN ASSOCIATION,
PEARSON SUNDERLAND, JR., PRESIDENT, INDIVIDUALLY
AND T/A SUN LAND CORP.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF MARYLAND

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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The motion of appellees Pyramid Bldg. & Loan Association and Pearson Sunderland, Jr., President, Individually and T/A Sun Land Corp. to dismiss or affirm this appeal in no way detracts from the substantiality of the questions presented or from the appropriateness and indeed the need of some affirmative action by this Court. That fact is apparent from the statement and arguments advanced in that

motion, arguments as to which only the following need be said:

I. STATEMENT.

The statement in the motion is presented with material omissions which amount to a misrepresentation of the facts; such omissions being readily apparent on comparison with Appellants' Statement of the Case beginning on page 5 of the Jurisdictional Statement. Moreover, regarding Appellees' statement on page 2 of the motion that Appellants hypothecated or pledged a sum of $2,500.00, Appellants entered into a guaranty contract with appellee Pyramid Bldg. & Loan Association, specifically identified as such a contract on the face of the document, whereby Appellants guaranteed the payment of $2,500.00 in the event of mortgage default by appellees Gayles. The guaranty agreement incorporated the Mortgage contract between Appellees Gayles and Appellee Pyramid Bldg. & Loan Association by reference, the Mortgage contract contained the usual foreclosure on default provision, and the guaranty agreement contained no provision authorizing Appellee Pyramid Bldg. & Loan Association to make any extensions of time for payment in the event of any default by Appellees Gayles without the written approval therefor by Appellants; as would be necessary for the Guaranty contract to operate other than is the conventional legal operation of Guaranty contracts. There were defaults by Appellees Gayles, there were extensions of time granted by Appellee Pyramid Bldg. & Loan Association, and there was no written approval by Appellants for any extension of time granted. Further, Appellees' statement on page 3 of the motion that Pearson Sunderland, Jr. was not the purchaser is contrary to the facts, because Appellee Sunderland's answers to written interrogatories addressed to him as

President of the Sun Land Corp. did not controvert that he was in fact the President and admitted that Sun Land Corporation was the purchaser. Also, the Mortgage document evidences Sun Land Corp. to be the purchaser. One need not be physically present at a foreclosure sale to be the purchaser.

2. Argument By Appellees.

It is to be noted that Appellees' motion cites Constitutional Law which is well established. However, all of the Constitutional case law cited by Appellees is taken out of context of the issue involved in the instant litigation; such out of context citation being blatantly typical of piecemeal prosecution and emphatically demonstrating that appellees have lost the issue in the forest of irrelevancy, a common failing of many bar examinees. The issue in litigation is, of course, the unconstitutional impairment of a contractual obligation, and appellees have cited no Constitutional Law precedent grounded in such a factual situation. It is submitted that appellees have not cited any Constitutional Law grounded in unconstitutional impairment of a contractual obligation for the reason that there is no Constitutional law which supports their position, but, to the contrary, the Constitutional Law which exists re the unconstitutional impairment of contractual obligation supports Appellants' position; namely, *City of El Paso v. Greenberry Simmons*, 85 S. Ct. 577 (1965); *Ashwander, et al. v. Tennessee Valley Authority, et al.*, 297 U.S. 288 (1936); *Richmond Mortgage & Loan Corp. v. Wachovia Bank & Trust Co., et al.*, 300 U.S. 124 (1937); and *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934). Appellants will prove to this Court at a hearing on the merits that the action of the Courts of the State of Maryland unconstitutionally impaired contractual obligations

to the detriment of Appellants which resulted in a spoliation of Appellants' property.

3. Federal Question, Due Process, and Equal Protection.

Arguments I, II, and III starting on pages 4, 7, and 11 respectively of the motion are considered to be so badly intermingled that it is difficult to determine exactly what position is being taken by Appellees. However, an effort will be made to answer the argument in the motion insofar as it is understandable.

Regarding the equal protection discussion on page 5 of the motion, Appellees demonstrate an excellent working knowledge of the jurisdiction of various tribunals, but appellees mislead this Court as to how Appellants have been denied equal protection. Appellees admit in the motion on page 10, lines 1 to 3 of the last paragraph thereof, that the People's Court of Baltimore City dismissed the case without a hearing and on page 11, lines 6 of the second paragraph that the case was tried de novo in the Baltimore City Court. Article 5, of the Annotated Code of Maryland set forth on page 7a of the Jurisdictional Statement Appendix permits an appeal to the Court of Appeals of Maryland from an action initially filed in the Baltimore City Court but denies a right of appeal to the Court of Appeals of Maryland from an action initially filed in the People's Court of Baltimore. The spirit of this legislation is to give a lower court hearing with a review by an appellate court. It is clear from the facts and in essence admitted by Appellees that the only lower court hearing obtained by Appellants was in the Baltimore City Court. If initially filed there, Appellants could have appealed to the Court of Appeals of Maryland. However, by law, Appellants had to proceed by Petition for Writ of Certiorari pursuant to Art.

5, Section 21 of the Annotated Code of Maryland set forth on page 8a of the Jurisdictional Statement Appendix. The Petition for Writ of Certiorari having been denied, Appellants were in effect given only a lowtr court hearing without any appellate review which is guaranteed to all other citizens of Maryland by the above discussed Art. 5 provisions. Accordingly, Appellants have been denied equal protection of the laws. The third paragraph on page 11 of the motion is answered by lines 8 to 14 on page 8 of the Jurisdictional Statement.

Regarding due process of law, it appears that the position being taken by Appellees can be best summarized by the last sentence on page 10 of the motion. It is indeed a novel concept in the annals of Constitutional Law that the requirements of due process are fulfilled merely by presenting a litigant with alternative remedies. This position of Appellees is considered to be so absurd as to not be even worthy of comment. However, it must be stated that Appellants find themselves in the proverbial Pandora's box with no possibility of obtaining the legal relief to which they are constitutionally entitled in the absence of intervention by this Court; namely, Appellants have not been given a trial at the magistrate level, Appellants are precluded from taking an appeal to the Court of Appeals of Maryland by State law, but Appellants are forced by state law to seek review by Petition for Writ of Certiorari which was denied. Appellants have been given a trial only in the Baltimore City Court from which other litigants in the State of Maryland have a right of appeal but which right has been denied by law to Appellants, and Appellants have been refused to have the issues reviewed on Petition for Writ of Certiorari by the highest Court of the State of Maryland; Appellants having set forth a basis for abridgment of their constitutional rights in the Petition for Writ

of Certiorari and having been refused the right to have evidence introduced and considered by the Baltimore City Court running to the fair market value of the property in litigation.

In view of the discussion set forth above, it is considered that the motion has not successfully controverted the Constitutional case law cited by Appellants, Appellants' contentions as to denial of due process and equal protection of the law, and the substantiality of the questions as set forth beginning on page 8 of the Jurisdictional Statement.

4. Response to Jurisdictional Statement.

It is to be noted that Appellees Gayles have not responded to the Jurisdictional Statement.

5. Non-timely Motion.

The motion was not timely filed as required by Rule 16 and for reasons set forth in Appellants' request to deny any extension of time.

6. Challenge.

The admission to practice before this Court by the Attorneys for Appellees on the motion is challenged.

7. Summary.

The instant litigation presents yet another instance of making a mockery and a myth of the concepts of due process and equal protection of the law and the prohibition of unconstitutional impairment of a contractual obligation. Let us begin with the instant case by a reversal of the courts of the State of Maryland to make it perfectly clear to every legal forum in the United States that the aforementioned concepts are to be rigidly applied in both letter and spirit and not merely given lip service as demonstrated by the instant litigation.

CONCLUSION

For the various reasons set forth herein, supplementing those in the Jurisdictional Statement, appropriate action is respectfully solicited to be taken by this Court to vacate or reverse the judgment below and to exercise the power of Appellate jurisdiction to make such disposition of the instant litigation as justice requires, as recited in *Honeyman v. Hanan*, 300 U.S. 14 (1957).

Respectfully submitted,

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Attorney for Appellants.